

§ 516.43

32 CFR Ch. V (7–1–14 Edition)

to release, redact, or withhold a particular document.

(10) Name of requested witness, expected testimony, requested appearance time and date, and whether witness is reasonably available.

(11) Analysis of the problem with recommendations.

RELEASE OF RECORDS IN CONNECTION WITH LITIGATION

§ 516.43 Release of Army and other agency records.

(a) *Preservation of originals.* To preserve the integrity of DA records, DA personnel will submit properly authenticated copies rather than originals of documents or records for use in legal proceedings, unless directed otherwise by Litigation Division. (See 28 U.S.C. 1733.)

(b) *Authentication of copies.* Copies of DA records approved for release can be authenticated for introduction in evidence by use of DA Form 4. (See § 516.25 for instructions.)

(1) Records maintained in U.S. Army Engineer Districts and Divisions will be forwarded to HQDA(CECC-K), WASH DC 20314-1000.

(2) All other records will be forwarded to the appropriate office at HQDA (See § 516.42).

(c) *Fees and charges.* AR 37-60 prescribes the schedule of fees and charges for searching, copying, and certifying Army records for release in response to litigation-related requests.

(d) *Release of records of other agencies.* Normally an individual requesting records originating in agencies outside DA (that is, FBI reports, local police reports, civilian hospital records) that are also included in Army records should be advised to direct his inquiry to the originating agency.

§ 516.44 Determination of release authorization.

(a) *Policy.* DA policy is to make official information reasonably available for use in Federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

(b) *Releasability factors.* In deciding whether to authorize release of official

information, the deciding official should consider the following:

(1) Has the requester complied with DA policy governing the release of official documents in § 516.41(d) of this part.

(2) Is the request unduly burdensome or otherwise inappropriate under the applicable court rules?

(3) Is the disclosure appropriate under the rules of procedure governing the matter in which the request arose?

(4) Would the disclosure violate a statute, executive order, regulation, or directive?

(5) Is the disclosure appropriate under the relevant substantive law concerning privilege?

(6) Would the disclosure reveal information properly classified pursuant to the DOD Information Security Program under AR 380-5, unclassified technical data withheld from public release pursuant to 32 CFR § 250, or other matters exempt from unrestricted disclosure?

(7) Would disclosure interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or confidential commercial or financial information, or, otherwise be inappropriate under the circumstances?

(8) Would the disclosure violate any person's expectation of confidentiality or privacy?

§ 516.45 Records determined to be releasable.

If the deciding official, after considering the factors set forth in § 516.44, determines that all or part of requested official records are releasable, copies of the records should be furnished to the requester.

§ 516.46 Records determined not to be releasable.

(a) *General.* If the deciding official, after considering the factors in § 516.44, determines that all or part of requested official records should not be released, he will promptly communicate directly with the attorney or individual who caused the issuance of the subpoena, order, or request and seek to resolve the matter informally. If the subpoena